

EXHIBIT A

YOLANDA IRVING, et al,

Plaintiffs,

vs.

THE CITY OF RALEIGH, et al,

Defendants.

MICHELLE A. McGIRR, RMR, CRR, CRC
Official Court Reporter
United States District Court
Raleigh, North Carolina

APPEARANCES:**On Behalf of the Plaintiffs:**

(EMANCIPATE NC)
ELIZABETH GUILD SIMPSON, Esquire
 PO Box 309
 Durham, North Carolina 27702

ABRAHAM RUBERT-SCHEWEL, ESQUIRE
Tin Fulton Walker & Owen
 119 East Main Street
 Durham, North Carolina 27701

On Behalf of the Defendant:

(City of Raleigh)
DOROTHY V. KIBLER, Esquire
AMY CAMPBELL PETTY, Esquire
City of Raleigh
City Attorney's Office
 PO Box 590
 Raleigh, North Carolina 27602

(Omar Abdullah)
JASON R. BENTON, Esquire
Parker Poe Adams & Bernstein LLP
 620 South Tryon Street, Suite 800
 Charlotte, North Carolina 28202

(Sergeant William Rolfe)
NORWOOD P. BLANCHARD, III, Esquire
Crossley McIntosh Collier Hanley & Edes, PLLC
 5002 Randall Parkway
 Wilmington, North Carolina 28403

(David Mead)
LESLIE C. PACKER, Esquire
Ellis & Winters LLP
 4131 Parklake Avenue, Suite 400
 Raleigh, North Carolina 27612

1 (Thursday, October 20, 2022)

2 **P R O C E E D I N G S**

3
4 (Open Court at 2:14 p.m.)

5 THE COURT: This is Irving v. City of Raleigh and there
6 are a number of people here in the case.

7 One of the first claims is a motion to stay by Abdullah
8 -- and I'll hear that -- and then I'll move on to the motions to
9 dismiss that the defendants have filed.

10 Defendant Abdullah is a former police officer or is a
11 police officer?

12 MR. BENTON: Former officer, your Honor.

13 THE COURT: And he's been charged criminally by the State
14 in Wake County --

15 MR. BENTON: That's correct, your Honor.

16 THE COURT: -- in Wake County Superior Court?

17 MR. BENTON: That's correct, your Honor.

18 THE COURT: And this is a civil action against him for
19 his misconduct, right?

20 MR. BENTON: This is a civil action. Yes, your Honor.

21 THE COURT: I don't foresee any reason to retard the
22 civil action. They can go a parallel tracks.

23 MR. BENTON: Your Honor, our concern -- and Jason Benton,
24 your Honor, for Omar Abdullah. Our concern is that the indictment
25 that was handed down in July -- that we learned about in late July,

1 early August -- has everything to do with and is substantially
2 similar to the facts in the civil suit.

3 And obviously our concern, your Honor, is that it puts
4 Mr. Abdullah in a position -- an almost impossible position -- if he
5 provides testimony in the civil suit and invokes his Constitutional
6 right to the Fifth Amendment, then he's at great risk for an adverse
7 inference that harms him in the civil action.

8 Of course, if he doesn't invoke that Fifth Amendment
9 right under the Constitution and provides testimony in response to
10 questions that we think will directly relate to the criminal action,
11 then he risks putting himself, again, at risk for the criminal
12 action itself.

13 We think there's enough commonality between the criminal
14 action and the civil action that this is one of those cases where
15 either a stay of the entire matter is warranted or at minimum, a
16 limited stay or limited protection for Abdullah himself such that
17 there can be no discovery by way of interrogatories or requests for
18 admissions or deposition of him in this case, your Honor.

19 That's the principal interest at play here, right. We're
20 looking at factors. That is the factor that we think plays in favor
21 for Mr. Abdullah.

22 The plaintiffs' interest -- and it's been articulated in
23 their response brief. We do, your Honor, have a reply brief that's
24 due Monday that we haven't yet filed with the Court. But the
25 plaintiffs' interest, according to their response brief, is in

1 avoiding delay of the civil action.

2 THE COURT: Which is legitimate.

3 MR. BENTON: Understood, your Honor.

4 THE COURT: I haven't been in the superior courts for
5 roughly 40 years, but I'm familiar with, by reputation, the speed at
6 which they operate and the lack of speed thereof. So to hold this
7 case captive in federal court because there's some collateral
8 related criminal case in state court offers me little interest.

9 MR. BENTON: Understood, your Honor. I will point out
10 that --

11 THE COURT: I mean, I don't want to be the dog wagged by
12 that tail.

13 MR. BENTON: I understand. Some of the case law, your
14 Honor, that we've put before the Court, at least with our initial
15 briefing, does provide a path forward where there can be --

16 THE COURT: But it doesn't know Wake County and it
17 doesn't know the Eastern District of North Carolina and so it's just
18 theoretical.

19 MR. BENTON: Understood, your Honor. There could be,
20 though, a pathway forward in which there is that limited stay as to
21 discovery with respect to Mr. Abdullah --

22 THE COURT: You could bifurcate the case and take him and
23 put him on a shelf and go forward with the rest of the case.

24 MR. BENTON: Pardon me, your Honor?

25 THE COURT: I said it could be bifurcated. You could put

1 him on a shelf, so to speak, euphemistically, and go forward with
2 the rest of the case.

3 MR. BENTON: Correct. I think there could be --

4 THE COURT: Then he'd stand the risk of being alone later
5 on after everybody else had been resolved.

6 MR. BENTON: Understood.

7 THE COURT: Is there anything about that that is unclear?

8 MR. BENTON: No, that is clear, your Honor. What we were
9 asking for alternative to a stay, is that limited stay as to
10 discovery with respect to Mr. Abdullah and for a limited period of
11 time.

12 What we could do is put a clock on it for, let's say,
13 90 days and then we revisit it to see where the criminal action is.

14 I do have -- Mr. Abdullah's criminal defense attorney is
15 here today as well and if your Honor has any questions related to
16 that matter --

17 THE COURT: I don't want to get involved in the criminal
18 case.

19 MR. BENTON: Yes, your Honor.

20 It's our position, your Honor, that the interest that
21 Abdullah has -- that Mr. Abdullah has in pausing these proceedings,
22 at least as it relates to discovery as to him, is an interest that
23 outweighs the other interests, the other factors.

24 THE COURT: Suppose he wasn't a defendant at all, but the
25 plaintiffs chose to call him as a material witness. He'd take the

1 Fifth and that's the end of it. I mean, he just -- did you do
2 anything? I decline to answer on the grounds, whatever. I mean,
3 isn't that a scenario?

4 MR. BENTON: It's not the scenario here, but certainly
5 there is a -- that could have been a possibility at some point.

6 THE COURT: Yeah. Still could be.

7 MR. BENTON: Potentially. Unless --

8 THE COURT: Take a dismissal without prejudice. Call him
9 as your first witness. He says, I won't say anything, I'm under
10 threat of prosecution. I'm going to take the Fifth.

11 MR. BENTON: Right.

12 THE COURT: Move on. Call your next witness.

13 MR. BENTON: Right.

14 THE COURT: What about that do you not expect?

15 MR. BENTON: It's a scenario I haven't envisioned, your
16 Honor.

17 THE COURT: Why not?

18 MR. BENTON: The scenario that I've -- that we've
19 concerned ourself with is the one where he --

20 THE COURT: He's an agent or employee of the City
21 defendant.

22 MR. BENTON: Formerly. Yes, sir.

23 THE COURT: The principal can be sued and have its
24 employees testify.

25 MR. BENTON: That's correct, Your Honor. Although we do

1 have bifurcated discovery in the matter. There is a phase I
2 discovery that concerns individual officer liability.

3 THE COURT: Where did that come from?

4 MR. BENTON: It's in our scheduling order.

5 THE COURT: Who put that out?

6 MR. BENTON: The parties agreed to it and I believe we
7 had a hearing with Judge Numbers.

8 THE COURT: Okay. All right. Well, that doesn't have my
9 okay, just for the record. Okay.

10 MR. BENTON: Understood. Understood.

11 Your Honor, in my reading of the case law, the principal
12 concern as it relates to delay, the plaintiffs' interest, which
13 you're right, is a legitimate interest, the delay concerns itself
14 with the potentiality for fading memories, fading or lost evidence.

15 Here we have an incident that is alleged to have occurred
16 in May of 2020 and perhaps some incidents that plaintiff intends to
17 get into that occurred a few months before. What I want to point
18 out to the Court and your Honor is that the risk of faded memories
19 and lost evidence is minimal in a case like this where you have the
20 State Bureau of Investigation that has conducted a robust
21 investigation. Has put together a file concerning its
22 investigation. Interviewing officers, et cetera. The parties all
23 have that file.

24 Memories can be refreshed if there's any risk of them
25 being lost. We have that evidence. That's been collected.

1 Discovery at this point, there's been over a thousand
2 pages, by my last review, your Honor, of documents produced by the
3 City in this matter. So we don't see delay as an interest here that
4 outweighs the potential harm to Mr. Abdullah.

5 Your Honor, the other delay point that I think you'll
6 hear from the plaintiff by way of -- plaintiffs, by the way of their
7 interest -- is the risk that monetary recovery might later be
8 difficult if during the pendency of a stay, there's a conviction on
9 the criminal matter.

10 We would submit that that interest simply doesn't
11 outweigh the interest that Abdullah faces with the harm from
12 simultaneous parallel actions. And frankly, there's a possibility
13 of that risk, regardless of any sort of conviction or stay because
14 of the allegations in this case.

15 And if plaintiff ostensibly proves its case on
16 fabrication of evidence and some of the intentional conduct, then
17 there is risk of no monetary recovery anyway in that regard. And so
18 the stay doesn't really change that, your Honor.

19 And finally, we don't at this point have a trial date. I
20 understand that the Court has an interest in moving its docket along
21 and moving cases along. We don't yet have a trial date. It's our
22 position that at least asking for a limited stay as to discovery
23 against Abdullah and for a limited period of time does not put in
24 harm either plaintiffs' interest, the public interest or the Court's
25 interest, your Honor.

1 THE COURT: All right. Thank you.

2 MR. BENTON: Thank you.

3 THE COURT: Do you want to respond to that at all?

4 MR. RUBERT-SCHEWEL: Briefly, your Honor.

5 THE COURT: What's your name?

6 MR. RUBERT-SCHEWEL: Abraham Rubert-Schewel on behalf of
7 the plaintiffs.

8 THE COURT: Okay.

9 MR. RUBERT-SCHEWEL: Good afternoon, your Honor.

10 THE COURT: Yes, good afternoon.

11 MR. RUBERT-SCHEWEL: A stay of this litigation will not
12 cure Officer Abdullah's Fifth Amendment dilemma. As your Honor
13 already noted, it is very unpredictable what will happen in state
14 court.

15 I checked today on the AOC's website. There are
16 currently 900 cases pending in Wake County Superior Court that have
17 been active for over 730 days. Over two years.

18 We know that the investigation by the Wake DA and the
19 SBI --

20 THE COURT: That's because the district attorney controls
21 the calendar. Isn't that still the practice in North Carolina?

22 MR. RUBERT-SCHEWEL: That is the practice, your Honor.

23 THE COURT: So the Court is just inert. It's sitting
24 there deaf, dumb and blind and the district attorney manages all the
25 flow of traffic so that -- what does that matter?

1 MR. RUBERT-SCHEWEL: Well, it matters because if your
2 Honor does grant a stay, it's -- this case could be continued for
3 years.

4 THE COURT: Or it could be the first case called.

5 MR. RUBERT-SCHEWEL: It could be the first called, but
6 the evidence shows that there are many, many cases that are still
7 pending.

8 Importantly, it is also very likely that, as your Honor
9 mentioned, that whenever Officer Abdullah is deposed --

10 THE COURT: Why don't you take a voluntary dismissal and
11 go against the other people and reserve your right. And later on,
12 if you need to join him back in, you can refile. Did you ever think
13 of that?

14 MR. RUBERT-SCHEWEL: I have not, your Honor --

15 THE COURT: I'm not telling you what to do, I'm just
16 saying that's one pathway through the complaint. Another pathway is
17 to just hold on and see what happens.

18 MR. RUBERT-SCHEWEL: We intend to proceed how we have
19 against Abdullah and all the officers and the City.

20 THE COURT: Okay. You represent the families and the
21 victims or do you represent the agency?

22 MR. RUBERT-SCHEWEL: We -- I represent everyone, your
23 Honor.

24 THE COURT: Okay.

25 MR. RUBERT-SCHEWEL: Emancipate NC and all of the

1 families.

2 THE COURT: Okay.

3 MR. RUBERT-SCHEWEL: The reason why, as you mentioned --

4 THE COURT: This is a 1983 action.

5 MR. RUBERT-SCHEWEL: It is, your Honor.

6 THE COURT: Yeah. Okay.

7 MR. RUBERT-SCHEWEL: It's also -- we also bring claims
8 under state law.

9 THE COURT: Well, those would be ancillary claims.

10 MR. RUBERT-SCHEWEL: They would be, your Honor.

11 THE COURT: Yeah.

12 MR. RUBERT-SCHEWEL: As you mentioned, Officer Abdullah
13 will continue to invoke his Fifth Amendment right whether or not he
14 is deposed or whether he is subpoenaed as a material witness. And
15 he's going to do this in response to the 30 or so controlled buys
16 that he organized and held along with his confidential informant,
17 Dennis Williams, and the vice team. The vast majority, if not all
18 of which, involved fake drugs or fabricated evidence.

19 Officer Abdullah's silence is also likely to continue
20 because he has no real defense here. What exactly is he going to
21 testify to that will aid his civil case? His lawyer has offered no
22 indication of any evidence that he would put on.

23 THE COURT: You're making your closing argument. This is
24 just a motions hearing.

25 MR. RUBERT-SCHEWEL: Your Honor, I'm happy to answer any

1 other questions you have --

2 THE COURT: I don't have any other questions.

3 MR. RUBERT-SCHEWEL: Well, I would like to then just
4 close on the prejudice to the plaintiffs.

5 The public has a great interest in this litigation.
6 They've shown an interest in this litigation. They're interested in
7 our Monel claims and our claims against the City. They're also
8 interested in justice for the individual victims.

9 Because of the reasons you mentioned and because of the
10 reasons in our brief, there is great prejudice to the plaintiffs if
11 your Honor grants a stay and we would ask that you consider the
12 equities --

13 THE COURT: How is there any prejudice?

14 MR. RUBERT-SCHEWEL: Your Honor, the prejudice is --

15 THE COURT: He's available as a witness. Call him as a
16 witness.

17 MR. RUBERT-SCHEWEL: Well, the prejudice is he is one of
18 our defendants in this case who we are suing. We are seeking a
19 judgment against him right now. If he is convicted at trial, he
20 may -- they may not be able to pay that judgment. The City may
21 refuse that judgment.

22 THE COURT: But this is all about insurance or --
23 probably and of little other consequence. Nobody who's a criminal
24 defendant is going to have any money to pay a judgment.

25 MR. RUBERT-SCHEWEL: It's very likely that if the civil

1 defendants continue without Officer Abdullah, they will be able to
2 blame Officer Abdullah's conduct as Officer Abdullah not being here
3 to defend himself at trial.

4 And we would like to -- we have conspiracy claims against
5 the defendants. We have claims involving all the defendants. We
6 have claims that the defendants failed to intervene against Officer
7 Abdullah. And we believe that we should be able to bring those
8 claims altogether as we have done.

9 THE COURT: All right. Thank you. I'll make a ruling on
10 that.

11 Who wants to be heard on the claims against the
12 organization as not having standing?

13 MS. KIBLER: Good afternoon, your Honor. I'm Dorothy
14 Kibler with the City of Raleigh. I'm also joined by Amy Petty, who
15 represents the City. The official capacity defendants as well.

16 It's our initial motion and both we and counsel for the
17 SEU officers and counsel for the individual co-defendants are ready
18 to proceed with our motion.

19 THE COURT: Yeah, I want to hear about the standing
20 issue --

21 MS. KIBLER: Yes, sir.

22 THE COURT: -- for the organization.

23 MS. KIBLER: And from our --

24 THE COURT: It's a 1983 case. We do, you know, hundreds
25 or thousands of those. There is a long history of it. The rights